

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE TETHER AND BITFINEX : Case No.: 19-cv-9236
CRYPTO ASSET LITIGATION : New York, New York
: June 6, 2023

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TRANSCRIPT OF STATUS CONFERENCE HEARING
BEFORE THE HONORABLE KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by electronic sound recording;
Transcript produced by transcription service.

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APPEARANCES CONTINUED

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1 THE DEPUTY CLERK: Counsel, please hold
2 while I bring in the Judge.

3 Your Honor, this is in the matter In re
4 Tether and Bitfinex Crypto Asset Litigation.

5 THE COURT: All right. Good morning to
6 everyone. And my hope is that you can hear me, and
7 you can raise your hand if you cannot.

8 I see nods. I appreciate that very much.
9 Mr. Lindenbaum, thank you.

10 I know that there are a number of people
11 participating by telephone today. In person, or at
12 least on the screen, I have some folks I can
13 identify. I have Mr. Dunlap, Mr. Schneider and
14 Ms. King for the plaintiffs. I have Mr. Greenfield
15 for the BT defendants. I have Mr. Cording for
16 Mr. Potter. I have Mr. Lindenbaum for Poloniex.

17 So -- and I have a number of you, again,
18 participating by phone. And wherever you are
19 participating and by whatever means, I am hoping
20 that you are all safe because there have been some
21 strange recent events. I didn't want to have this
22 conference, but we're having this conference, and
23 let me explain to you what I'm trying to achieve and
24 what my concerns are.

25 We had a conference on February 8th where I

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1 had some pretty stern words with Ms. Halligan about
2 what I thought was insufficiently rapid progress,
3 insufficient attention paid to discovery in this
4 case. Perhaps defense counsel thought that that
5 meant it was open season on plaintiffs' counsel. It
6 was not.

7 My sense, based on everything I've seen
8 since then, is that plaintiffs and their counsel
9 have, since the February 8th conference, tried to
10 catch up, tried to resolve the discovery issues, and
11 tried to figure out what is outstanding and what the
12 disputes between the parties are. I've been
13 getting, basically, weekly discovery disputes, and
14 I've tried to resolve them as quickly as I can.

15 What causes me concern is the most recent
16 series of letters that I've received from the
17 parties. I did not think that I had to issue the
18 May 1st endorsement. I thought that was clear, but
19 I will accept the fact that some of you thought that
20 was not clear.

21 That said, the May 30th endorsement was, to
22 me, entirely unnecessary. And to the extent that
23 defense counsel are now suggesting that I meant
24 something other than what I said, I'm very
25 disappointed because I don't think you could fairly

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1 and in good faith interpret my endorsements --
2 earlier endorsements any way other than the way
3 plaintiffs interpreted them. So I have to say, the
4 May 30th endorsement was a difficult one for me to
5 write and to sign.

6 We are now in the position where
7 plaintiffs' counsel is asking for an extension.
8 Everyone on this conference knows I don't want to
9 grant this extension. But I feel as though defense
10 counsel are forcing my hand and forcing me to do so.
11 The reason we're having this conference today is
12 that if I am granting an extension, for whatever
13 length it is, I want it to be the last. And I don't
14 know how with this group of attorneys to communicate
15 that to you.

16 So, Mr. Dunlap, for example, one of the
17 things raised in the most recent set of submissions
18 that I got over the last day or so was that there is
19 still the issue of the anonymous trader. There may
20 be a Hague Convention issue. There may be other
21 issues. I don't know. But I'm not especially -- if
22 you're asking for 90 additional days, I don't want
23 you to come to me on day 89 and say, we need another
24 120 for the anonymous trader. I also need to
25 understand what remains as discovery disputes.

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1 And I appreciate -- and I'm saying this to
2 both sides, all sides, that you might not know
3 there's a dispute until there's a dispute. But I
4 keep thinking, I'm answering issues, I'm resolving
5 issues, and there can't be that many more categories
6 of documents left to address. But perhaps I am
7 wrong. So we are here today so that you understand.

8 Plaintiffs' counsel, I'm watching you in
9 the sense that I do not want to have accretive
10 discovery extension requests. I just don't.

11 Defense counsel, I'm watching you because,
12 as clever as you are, I'm beginning to -- well,
13 let's just say you're dissipating a lot of the
14 goodwill you have with me with your most recent
15 suggestions. And let me just think.

16 Mr. Lindenbaum, this idea of dismissing the
17 whole case as to Poloniex because there haven't been
18 timely notices of deposition, that -- that's really
19 where my blood started to boil. So let's not do
20 that again.

21 So, friends, now that we're all together,
22 let me understand what's left, how long is it going
23 to take to resolve.

24 Mr. Dunlap, I am beginning with you. And,
25 counsel, just so you understand, you're all

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1 switching positions in my Teams meeting, so if my
2 eyes go to different places, it's because I'm trying
3 to follow you.

4 Mr. Dunlap?

5 MR. DUNLAP: Yes, Your Honor, and thank
6 you. I can tell you exactly what we think is
7 outstanding on the trading records. And this really
8 is, for us, about the trading records. Our position
9 is not that we need every single last e-mail before
10 we can start depositions. We think trading records
11 are in a different category. We think you recognize
12 that in your September order when you said they go
13 to our core allegations.

14 So we have received a flurry of productions
15 from the BT defendants recently, but we think there
16 are three basic issues that we have. The first is
17 that we still don't have any records for account
18 3319. And they make reference to this in a footnote
19 in their most recent letter, where they say that
20 they're continuing to search for any responsive
21 transaction records in this automated system and
22 that it requires substantial time and computing
23 resources to query. We're not sure why that is. We
24 identified this account to them long ago, including
25 our April motion to compel. But we don't have any

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1 records. And they say also in the footnote, they
2 don't think these records are relevant. We hope we
3 don't have to re-litigate again that this is
4 relevant.

5 But this is a big deal because this is one
6 of their two major reserve accounts. While we don't
7 have records for it, we do have documents describing
8 that account, one of which says there were around
9 500,000 trades in a single month in 2017. That
10 would extrapolate out to millions of trades in the
11 relevant period. So this is a very, very big deal.

12 Any suggestion we can, sort of, move ahead
13 with our analysis without this account is kind of
14 like saying we can eat the meal without the entree.
15 Like, we need these records. It could be a large
16 chunk of the data.

17 There are also a couple of smaller issues.
18 There are a couple of accounts they've produced to
19 us where we see some gaps that we're talking to them
20 about. For example, account 1675, that is one
21 belonging to Mr. Devasini. You may recall evidence
22 we presented that they had denominated trades in USD
23 as -- in USDT as USD before 2019. We don't see any
24 USDT bitcoin trades in that account. And this was
25 one where they say they're not still looking. They

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1 just say there are no records.

2 That strikes us as peculiar because we have
3 documents indicating trades of USDT for bitcoin in
4 January of 2015, a month before the relevant period
5 starts. So we've asked them to confirm not just
6 that there are no records, but that there were no
7 trades. Or if there were trades, but there are no
8 records, to explain to us what happened to the
9 records, if they were deleted, when and how. So
10 far, they've declined to give us any of that
11 information, so we're still meeting and conferring.

12 And the third bucket of concerns, I would
13 say, to use an old term now, are unknown unknowns.
14 They produced many documents to us recently. We got
15 a bunch at 9 p.m on Monday night. We got others
16 last night we're still reviewing. We can't be
17 100 percent sure this is the full universe. At one
18 point, they gave us a rog answer listing all their
19 accounts. That was in April. We identified
20 accounts that were missing. They said they would
21 give us supplementary answer on that list. We
22 haven't gotten that yet.

23 So we certainly hope that we at least know
24 what all the accounts are, and we just have
25 identified ones where there are gaps, but we can't

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1 be 100 percent sure.

2 THE COURT: All right.

3 MR. DUNLAP: So that's what we think is
4 missing, and that's why we're asking for the
5 additional time.

6 THE COURT: But, Mr. Dunlap, my concern is,
7 what you've just said to me does not, to me, sound
8 like there's anything new. It sounds like these are
9 things that we've talked about in the past, except
10 for what you've just described as "the unknown
11 unknowns." I think you're telling me and giving
12 yourself the wiggle room to say, I didn't even know
13 to ask for that because I didn't know it existed,
14 but all right.

15 And, Mr. Dunlap, anything else you want me
16 to know in response, for example, to the letters
17 that I've received in the last 24 to 36 hours?

18 MR. DUNLAP: Well, I'm glad to answer any
19 questions you might have about that. I mean, our
20 request basically boils down to -- we're not really
21 looking for more absolute time. We're just looking
22 to be put in the position we would have been in had
23 we received all of the trading records at the
24 current substantial completion deadline in March.
25 So that would give us about four months to take all

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1 the records. It will take us, because this is so
2 large -- it's like a jigsaw puzzle, you need to have
3 all the pieces before you can understand what the
4 whole image looks like.

5 We need about four months. That would be
6 time to analyze the data on the front end, take
7 depositions, use that information on the back end
8 for expert work for the next stage of the case.
9 That's where we would have been if they'd given us
10 everything in March, and that's where we're asking
11 you to put us in now. We want to move this case
12 forward. We don't want to drag our feet. We don't
13 want to ask for this extension. We certainly don't
14 want to ask for another one, but we feel compelled
15 to just because we want a fair shot to take
16 depositions and analyze the data on a full record.

17 THE COURT: Mr. Dunlap, when I spoke with
18 your former colleague, Ms. Halligan, now Judge
19 Halligan, in February, she said to me in the course
20 of our discussions that there were brewing discovery
21 disputes that she anticipated would result in
22 letters being submitted to me. My sense was that to
23 the extent that there were discovery disputes, you
24 have since February identified them and made me
25 aware of them.

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1 At this moment, are you aware of simmering
2 discovery disputes that you have not advised me of
3 before now?

4 MR. DUNLAP: I am not aware of any. I will
5 just drop a footnote that there may be some I'm
6 currently unaware of that my team is not, but
7 there's no big-picture thing. Just -- and if I
8 could just step back. You know, we had been looking
9 for some additional documents. I think you -- from
10 additional sources. I think you gave us some very
11 clear guidance about where you thought the
12 boundaries of relevance were. So we have really
13 tried to focus within the boundaries that you set
14 for us. The main focus is getting the data and
15 records out of the BT defendants. There's some
16 additional stuff that we've gotten from third
17 parties and from Poloniex.

18 I'm not aware of anything else that's
19 major, and certainly nothing that's major that would
20 lead us to ask for an extension or otherwise delay
21 depositions. This is really, to us, about the data,
22 and the gaps that remain.

23 THE COURT: All right. Thank you very
24 much.

25 Mr. Greenfield, may I hear from you next,

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1 please.

2 MR. GREENFIELD: Yes. Thank you, Your
3 Honor. Let me just start by, you know, giving you a
4 genuine apology for misunderstanding your September
5 order and your May 1st order. I can tell you that
6 we are not trying to be clever or strategic or
7 tactical or withholding any documents. We had a
8 legitimate misunderstanding about what the scope of
9 that was, partly in response to correspondence with
10 plaintiffs after the May 1st order where they
11 indicated to us that they were not interested in
12 personal accounts that were used purely for personal
13 trading. They later clarified that that distinction
14 did not apply to seven individuals who are
15 specifically mentioned in their letter.

16 That was not our understanding. We didn't
17 understand any reason to turn over purely personal
18 trading records. We understand that we misread the
19 Court's orders. We apologize for that, but that was
20 not any kind of gamesmanship or anything like that,
21 I can assure you.

22 With respect to these personal trading
23 records, you know, they -- we don't see that there's
24 a reason for them to hold up the depositions. We
25 think that plaintiffs have, as we put in our letter,

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1 unnecessarily delayed beginning of depositions.

2 They waited until April --

3 THE COURT: Mr. Greenfield, I disagree with
4 you.

5 MR. GREENFIELD: Okay.

6 THE COURT: Produce the personal trading
7 records. I disagree with you.

8 MR. GREENFIELD: I totally understand. We
9 have fully produced the personal trading records.
10 We produced them on Monday. So they now have them.
11 We believe they have plenty of time under the
12 current schedule to move forward, respond to the
13 dates that we've proposed. They noticed depositions
14 in mid-May. We responded with dates, proposed dates
15 for all of the depositions they noticed, and they
16 will not respond to our proposed dates. We'd like
17 to schedule the depositions and move forward. They
18 have all the documents that they've requested.

19 In terms of account records --

20 THE COURT: Sir, if I could just pause for
21 a moment. Thank you so much.

22 As a result of -- I believe as a result of
23 my May 1st and May 30th orders, you and your team
24 have the clarity you may not have had originally.
25 Your opening statements suggest as much.

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1 Now that you have that clarity, have you
2 produced everything covered by those endorsements
3 and orders?

4 MR. GREENFIELD: Yes. There's -- the one
5 exception I understand is this account 3319. And I
6 think it'd be helpful if I can just explain a little
7 bit of background about that account.

8 Mr. Dunlap referred to it as a "reserve
9 account," and there are documents out there
10 referring to it as a "reserve account." It was not
11 an account that held USDT reserves, which is the
12 subject of this lawsuit. It was referred to as a
13 "reserve account" in other contexts, in that it was
14 a system account that held assets on behalf of
15 Bitfinex. And, specifically, its main purpose, my
16 understanding, is when trades are executed by
17 customers on the Bitfinex exchange, there's a small
18 fee.

19 So if you trade bitcoin, you know, maybe
20 0.0001 bitcoin is a fee. It's deposited into this
21 account. The account then sells that for dollars.
22 So there is a -- an exchange of bitcoin for dollar
23 in that account. It is just the natural automated
24 process of the account selling off these fees. It
25 may have other, kind of, similar purposes, but these

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1 are all, kind of, automated processes.

2 We searched this account based on, you
3 know, our original understanding of the September
4 order, which, at the time, did not include USD
5 trades. USD was not part of the RFPs at the time.
6 And we came back with no responsive transactions.
7 So that's why plaintiffs don't have any.

8 We've now gone back after the Court
9 clarified in the May 1 order, yes, you should
10 include USD transactions. We are going back and we
11 are researching it. But it's an enormous account.
12 It's been in operation -- you know, this is a
13 five-year discovery period. There's upgrades to the
14 systems. Things, you know, change in the operation
15 of the system. So it is a very time-consuming
16 process to search this account.

17 Just a bit of further context on this,
18 Bitfinex is a crypto account. It's not like the
19 New York Stock Exchange. It runs 24 hours a day.
20 There are no holidays or trading hours. And it
21 takes the same people and the same computing power
22 that's used to run the exchange to then run searches
23 over this extended period to try to, you know, pull
24 out any relevant transactions like, you know, USD
25 for bitcoin or for, you know, the certain other

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1 crypto commodities that are listed in the RFP.

2 So it's just necessarily a process that,
3 even if you tell us produce immediately, we hit go,
4 it's going to take a long time to do it. And
5 there's, they said, different versions over time, so
6 it's not even search one database, it's search
7 multiple databases over time. But --

8 THE COURT: Do you have a -- and to be
9 clear, sir, I want to acknowledge that there are
10 things that I thought were not -- were fully clear.
11 I suspect -- I think I'd have to confess that the
12 dollar -- the USD/USDT distinction was not as clear
13 in my May 1st order than it could have been, so
14 that's on me.

15 What do you think is the estimated time
16 frame for the production of these documents, sir,
17 recognizing that it's an enormous amount of work?

18 MR. GREENFIELD: What I've been told is
19 that it should take, like, another, like, week,
20 maybe ten days for this query to fully run and for
21 us to be able to produce the documents.

22 THE COURT: I see, sir. Okay.

23 MR. GREENFIELD: But, again, these are --
24 these are, you know, trading commissions being
25 cashed out. It's hard to see how that has any

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1 relevance to these claims, which, you know, again,
2 if we can remember what's actually in the complaint
3 in this case, is, you know, Tether issuing unbacked
4 USDT, sending it to Bittrex and Poloniex, making
5 strategically timed purchases of bitcoin on those
6 two exchanges, and creating this, you know, biggest
7 bubble in human history.

8 I don't know what that's got to do with
9 this kind of automated account that's cashing out
10 commissions, but I don't want to re-litigate
11 relevance. I'm not --

12 THE COURT: I thank you, sir. Okay. Thank
13 you.

14 All right. Sir, with respect to the 1675
15 account, any intel on the gaps that are mentioned by
16 Mr. Dunlap?

17 MR. GREENFIELD: I'm sorry, I'm not in the
18 weeds enough on that particular account.

19 THE COURT: Yeah, okay.

20 MR. GREENFIELD: But I -- my understanding
21 from my team, who is deep in the weeds, is that we
22 have fully produced for the personal accounts.

23 THE COURT: Okay. Thank you.

24 Sir, I could tell that you were listening
25 very carefully to what I said at the beginning.

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1 And, again, my issue is -- I appreciate that you're
2 telling me, please, Failla, do not extend this
3 discovery deadline further. I don't want to. I've
4 already made that clear, but I am at least
5 considering the possibility. I really don't want to
6 do it another time.

7 To the best of your knowledge, sir, and
8 your discussions with your team, are you aware of
9 other disputes or other instances in which there are
10 outstanding meets and confers or outstanding e-mail
11 disputes that I just don't know about?

12 MR. GREENFIELD: Yeah. So let me -- I just
13 want to make sure that no one comes away with this
14 with any misapprehensions about, kind of, what's
15 left.

16 We have this 3319 account. We have some
17 Skype data for Mr. Devasini that we are -- expect to
18 produce in the next few days. You know, this is
19 just, again, to give you a sense of how we are
20 digging deeply to try to produce this stuff. This
21 stuff was not available on Skype. We recently found
22 an old archived backup of the Skype account. It's
23 archived in some format that's not used anymore. So
24 it's been a technical challenge to, kind of -- I
25 don't know what the word is -- reinvigorate, pull

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1 out the actual messages again. We found a vendor
2 who's able to do that. And so we're going to go
3 through and produce documents from that.

4 We're finalizing our privilege review. I
5 think the bulk of the documents that have been
6 produced since March are all, kind of, things that
7 are falling out of the privilege review. There may
8 be a few more documents, so I just want to put that
9 out there.

10 THE COURT: Mr. Greenfield, on that point,
11 please, sir, I have fears. I'm not going to say I'm
12 being kept up late at night, but maybe I am, about
13 how long your privilege log is.

14 Are we talking about thousands of
15 documents? Hundreds of documents? Millions of
16 documents?

17 MR. GREENFIELD: I don't know the answer.
18 I think it's probably thousands.

19 THE COURT: Okay.

20 MR. GREENFIELD: But we've produced, you
21 know, over 200,000 documents. So something I think
22 in the low thousands would be typical, but --

23 THE COURT: It would be. It doesn't mean
24 we're not going to have a privilege battle later on,
25 but I just wanted to get myself girded for it. So

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1 thank you, sir. Please continue.

2 MR. GREENFIELD: And, you know, we have --
3 as I'm sure you know, we have layers of privilege
4 review, right, it's people doing the first overview,
5 tag things as potentially privileged. We're
6 scrutinizing and continue to scrutinize as we put
7 together a privilege log. So if there's anything
8 that we don't think belongs there, we're going to
9 pull it off, we're going to produce it. And, you
10 know, I don't want that to be held against us. We
11 have a -- one former employee or contractor who
12 notified us that she has a file of documents, so
13 we're going to produce that. I think that that's
14 basically it.

15 The interrogatory response, I don't think
16 it was deficient. Plaintiffs came and asked us for
17 additional information that was not technically part
18 of what they had asked for, and we are agreeing to
19 amend that, and we expect to get that in the next
20 week. Hopefully, sooner than a week, but I don't
21 want to make promises.

22 We produced a bunch of Telegram chats
23 yesterday. This was another point where, you know,
24 we had technical challenges with the production.
25 And we actually had our -- the CFO sit and take, you

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1 know, 160 separate screenshots of his phone, and we
2 produced it because that's the only means we had of,
3 kind of, getting both sides of the conversation to
4 come out. So that was for this.

5 In terms of remaining issues for potential
6 dispute, I think there's just a couple that I don't
7 know for sure are going to get put in front of you,
8 but they're, as you said, brewing. One is we made a
9 request for plaintiffs' tax returns, not the full
10 tax return, but just portions of tax returns that
11 itemize their crypto transactions and any gains or
12 losses.

13 We don't have comfort that we've gotten a
14 full set of transaction records from plaintiffs.
15 Obviously, it's -- I don't think it's an
16 exaggeration to say those are critical. That's the
17 whole basis of their lawsuit. And, you know, we
18 think we're entitled to those portions of the tax
19 returns. We're not asking for the full thing.
20 We're not trying to invade their privacy, just those
21 portions. Plaintiffs so far had said, absolutely
22 not. So that's one issue that might come before
23 you.

24 And the other issue that we've been
25 discussing in meet and confers relates to the

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1 30(b)(6) deposition that they've noticed for iFinex.
2 iFinex is the parent company of BFXNA and BFXWW.
3 Collectively, that is, basically, the Bitfinex
4 exchange. They sent us a deposition notice for
5 iFinex. We responded. We sent our two designees.
6 If we have to divide up the topics, the two
7 designees are going to be able to speak on behalf of
8 all three of the Bitfinex defendants as they were
9 defined in that notice.

10 And plaintiffs are insisting that they
11 should be able to take separate 30(b)(6)s of iFinex,
12 BFXNA, BFXWW. They want to take one at the
13 beginning of the deposition period. They want to
14 take one at the end to, according to them, be able
15 to address any inconsistencies in testimony
16 throughout the deposition period. We think that's
17 duplicative and cumulative and unduly burdensome to
18 have multiple 30(b)(6) depositions for, basically,
19 asking the same questions about the Bitfinex
20 exchange.

21 So I'm hopeful that on both of those we can
22 work it out, but just so you're not surprised if
23 there's another filing, I'm putting it out there.

24 THE COURT: Sir, I won't be surprised, but
25 my sense is -- and you'll tell me if I'm wrong --

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1 that as to each of these two issues, the opening
2 letter is coming from you.

3 MR. GREENFIELD: Well, the 30(b)(6), yes.
4 So, yeah, the 30(b)(6) if they -- we don't know if
5 they're going to actually follow through on this
6 plan to notice a second 30(b)(6) deposition for
7 Bitfinex. If they did, then we would be seeking a
8 protective order. So that would come from us.

9 THE COURT: Okay.

10 MR. GREENFIELD: On the tax returns, yes,
11 that would also come from us. And then, I guess,
12 for the sake of completeness, not to overstay my
13 welcome here, but, you know, we've raised the issue
14 of holding the depositions remotely. Our witnesses
15 are located in foreign countries around the world,
16 and the idea of traveling around the world for all
17 these depositions, to us, seems unnecessary and
18 unduly costly and burdensome, given that, you know,
19 for the past three years, we've all been doing
20 depositions via Zoom without any issues.

21 That's all I can think of right now.

22 THE COURT: Okay. No, I -- actually, I
23 thank you for thinking of those because I am now --
24 I will now not be surprised or perturbed if I
25 receive them. I mean, I would hope that you all

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1 would be able to work these issues out, but if
2 you're not, then I'm around, and that's
3 understandable. Thank you.

4 Mr. Lindenbaum, is there something you want
5 to add, sir?

6 MR. LINDENBAUM: No, Your Honor. I'll
7 just say that I think that this motivated the
8 statement about, you know, potential dismissal,
9 which is we -- you know, we've been done with our
10 production for quite a long time, many, many months.
11 None of the recent disputes -- really, any of the
12 disputes have concerned us other than the number of
13 depositions. And we just have the concern that, you
14 know, particularly with respect to the anonymous
15 trader and the fact that, you know, there hasn't
16 been a deposition for him or perhaps even an
17 initiation of the Hague process, that there may be
18 further requests for extension since that is, you
19 know, what we think is a pretty important
20 deposition.

21 So -- but that's all. That's all I wanted
22 to note. And I'm not aware on our side of any, you
23 know, brewing disputes that should cause, you know,
24 extension on our side.

25 THE COURT: Okay. Thank you. I appreciate

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1 that. Thank you.

2 And, Mr. Cording, I appreciate your
3 patience, sir. What would you like to add, if
4 anything?

5 MR. CORDING: Not much, Your Honor.
6 Thanks very much. Just very briefly, building off
7 Mr. Lindenbaum's comments, we were fast out of the
8 gate here in terms of discovery. We made the core
9 of our production last May, over a year ago, and
10 supplemented that over the course of last year. I
11 think we've been completed for over six months now.
12 We had a few following the February 8th conference,
13 a few what I would characterize as constructive
14 conversations with the plaintiffs around particular
15 follow-up requests.

16 To my knowledge, there are no open issues
17 involving Mr. Potter's productions or, you know,
18 even simmering issues. If that's in error, we would
19 welcome correction on that point from the
20 plaintiffs' lawyers. So to our view, this is not
21 really about us, though, we, of course, appreciate
22 the interdependencies around the schedule.

23 The one thing I just wanted to note very
24 briefly, as privilege logs are coming due later this
25 month, we had written the plaintiffs last month

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1 stating our intention, under the Local Rules of the
2 SDNY, to present a categorical privilege log for
3 Mr. Potter. And we think that he's, sort of,
4 particularly amenable to that since these would be
5 logging documents largely around Mr. Potter's
6 departure from Bitfinex and Tether, now going on
7 five years ago.

8 These would not be documents where Mr.
9 Potter was interfacing with attorneys, where
10 Bitfinex or Tether would be the owner of the
11 privilege. These would be documents involving, you
12 know, essentially, personal legal advice Mr. Potter
13 was receiving. So we were intending to proceed on
14 that basis, not having received any objections or
15 gotten any, you know, kind of engagement or pushback
16 from the plaintiffs on that.

17 So I just -- while we were on the topic of
18 privilege log, wanted to make sure that one point
19 was clear, and nor do I expect that to be a
20 voluminous amount of documents that are logged.

21 THE COURT: You don't have thousands on the
22 privilege log, sir?

23 MR. CORDING: We don't.

24 THE COURT: Okay. Thank you. All right.
25 Anything -- Mr. Cording, anything else

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1 you'd like me to know, sir?

2 MR. CORDING: No, Your Honor. Appreciate
3 it.

4 THE COURT: Okay. Thank you.

5 Mr. Dunlap, in the speakers who followed
6 you, I've been advised of certain issues that I, of
7 course, sit here and hope will not be issues, but I
8 figured I'd -- now that you've heard these -- each
9 of the -- your adversary counsel speak about open
10 issues, tell me now if you believe that these are
11 going to be problematic. Tell me now if you -- if
12 these are going to result in you asking me for still
13 another extension.

14 MR. DUNLAP: Let me -- I think those are
15 slightly two separate questions, so let me break
16 that down. And apologies if I misunderstood your
17 question to me. I had -- I didn't understand that
18 there were any other issues in terms of production
19 of documents or data.

20 I think there are issues, as Mr. Greenfield
21 said, about depositions. We do have issues about
22 how many 30(b)(6)s we can take and the topics. We
23 do have disputes about whether they should tell us
24 where their witnesses are and give us the option to
25 depose some of them in person. And we will work

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1 through those. And he may move. We may move. That
2 is something that will come out.

3 On the privilege log, we're glad to --

4 THE COURT: And --

5 MR. DUNLAP: Sorry.

6 THE COURT: And, Mr. Dunlap, no, just to --

7 MR. DUNLAP: Yes.

8 THE COURT: -- that point, I -- what you
9 were -- what you're saying is absolutely right. I
10 was asking a question about simmering discovery
11 disputes, I think in my head what I was thinking
12 about -- and excuse me if I wasn't clear, and I will
13 be -- is things that would cause you to ask for
14 still another extension.

15 MR. DUNLAP: Right.

16 THE COURT: If the issue is one of how is
17 this deposition going to take place and how many
18 depositions will there be, in my mind, that would
19 not necessitate an extension of the discovery
20 schedule. It would just necessitate clarification
21 or resolution of the dispute.

22 MR. DUNLAP: Right. And that's where I was
23 going, which is that and things about documents
24 falling out of privilege logs, assuming there's no,
25 like, catastrophic issue that requires extended

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1 motion practice. Those sorts of things. If we get
2 the extension that we're asking for, I don't
3 anticipate that any of those issues would require us
4 to ask for more time.

5 Anything can happen, but I certainly would
6 expect that we can either work out or bring up to
7 you very quickly issues about 30(b)(6) depositions,
8 locations of depositions, privilege issues, you
9 know, supplementary rog responses in the near
10 future, and that it wouldn't cause a delay beyond
11 what we're asking for.

12 THE COURT: Mr. Dunlap, to the point of
13 these other issues that have been raised by
14 adversary counsel, the issues that were raised, for
15 example, whether the depositions are remote, how
16 many 30(b)(6) witnesses, the request for the tax
17 returns, the possibility of a categorical privilege
18 log, things of that nature, at this time, as you're
19 talking to me, do you believe that those are issues
20 that will necessitate letter motion practice before
21 me, or do you not know?

22 MR. DUNLAP: I think the depositions might.
23 The tax returns, I hope not, but I would -- you
24 know, I'd need to refresh myself on exactly where we
25 are on that. And on the privilege log, I expect we

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1 can work it out. I need to double-check with my
2 team, but I think we can probably work that out. I
3 think depositions -- you know, hope springs
4 eternal that we can work out a deal with
5 Mr. Greenfield. But if not, we will bring that to
6 you promptly.

7 THE COURT: Okay. Thank you.

8 I appreciate everyone's preparation for
9 this conference and the information that you've
10 given me. I'm going to just take myself out of the
11 conference for a moment or two and look at my notes,
12 and then I'll get back to you as soon as I can. If
13 you wish to turn off your monitors and mute
14 yourselves, that's fine as well. I'll get back as
15 soon as I can. Thank you.

16 MR. GREENFIELD: Thank you.

17 (A recess was taken.)

18 THE DEPUTY CLERK: Counsel, the judge will
19 be on in about two minutes.

20 (Pause in proceedings.)

21 THE COURT: Counsel, I appreciate your
22 patience while I took that time to think about these
23 issues. And lest you think I was just back here in
24 my chambers flipping a coin, I was not. I was
25 really thinking about these issues. And I have to

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1 say that I share some of the frustration that was
2 expressed to me this morning by Mr. Cording and by
3 Mr. Lindenbaum because, as you noted to me, you --
4 what was the expression of Mr. Cording, you were
5 fast out of the gate. I don't think I've had any
6 issues with Mr. Potter's production. I think I may
7 have had one dispute about the Poloniex production.
8 But we are where we are. And, unfortunately, I
9 can't schedule this for separately tracked discovery
10 schedules.

11 I do not believe -- I don't want to believe
12 that my orders were imprecise or that they were
13 subject to multiple views or that they were
14 confusing, but Mr. Greenfield effectively tells me
15 that they are. And as a consequence of that,
16 documents are only now being produced and
17 plaintiffs' counsel is only now receiving them. And
18 with much regret and a twinge of annoyance in my
19 voice, I am granting the 90-day extension. It is
20 grudging, but it must be done.

21 I want to be clear that I am telling
22 Mr. Dunlap and his team by extension to plan for all
23 eventualities, to plan for the unknown unknowns. I
24 will not extend based on any dealings with the
25 anonymous trader. I will not extend -- and my -- by

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1 saying "I will not extend," I mean I will not extend
2 beyond the one I'm doing today for depositions if it
3 turns out you believe and you can demonstrate to me
4 that you are entitled to more than the 15 that I've
5 allowed. So this is it. This has to be it.

6 And I feel that in today's conference, if
7 nothing else, we've aired out these issues. Again,
8 I think you all know, given my Chambers' inbox, I
9 think you know that I'm around for discovery
10 disputes. I've heard a couple of potential ones
11 today. I hope you get them to me as soon as
12 possible.

13 Mr. Dunlap, you did propose a new case
14 management plan. I can sign that, but we may be --
15 we may have already lost a week on it.

16 Mr. Dunlap, is it your preference, sir, to
17 submit a new one or to have me sign what was
18 submitted last week, or in the last couple of weeks?

19 MR. DUNLAP: Given what's going on here
20 today, Your Honor, I think best that we confer with
21 the other side and try to submit a plan that
22 reflects your orders, that incorporates all the
23 updated dates.

24 THE COURT: Okay. I will look forward to
25 it later this week.

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1 Thank you, all, for your time today. I
2 appreciate it. I hope not to hear about further
3 discovery disputes, but I'll be prepared if we are.

4 Be well, everyone. Thank you. We're
5 adjourned.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of In re Tether and Bitfinex Crypto Asset Litigation, Docket #19CV9236 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature

Adrienne M. Mignano

ADRIENNE M. MIGNANO, RPR

Date: June 8, 2023